IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

MISCELLANEOUS PETITION NO.2 OF 2006

Om Upamanyu Dev Petitioner

Mr.M.S.Doctor with Ms.Karbhari i/by Karbhari & Co. for petitioner.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 19th April 2006

PC :

1. Heard Shri Doctor appearing for the petitioner.

2. This petition is filed by the petitioner who is father of the minor. The minor is entitled to a property namely a flat which is situate in the building "Prem Court", Churchgate Reclamation, Mumbai. However, this property has been in the possession of the tenant for a considerable period of time. The father namely the petitioner as also mother and the minor, have shifted their residence to Bangalore. They are there for more than three decades now. This property is, therefore, not utilised and continues to be in

possession of the tenant. The father has taken a decision that for the advantage of the minor and for his future prospects, the amount that would be realised by sale of the property to the sitting tenant, would be utilised for purchasing another property in State of Karnataka in the name of minor. It is in these circumstances that the petition is filed.

3. The tenancy agreement so also the agreement for sale with the tenant is annexed. The valuation report states that the property is valued on "as is where is" basis. Therefore, although, being situate in prime locality in Mumbai, it being in the possession of the tenant for more than three decades, the property would be fetching a sum of Rs.42.00 lakhs as per the Valuer. The agreement for sale with the tenant discloses that he is willing to pay Rs.45.00 lakh (Rs.Forty five lakh only). In these circumstances, I am satisfied that the requirement stipulated in Section 8(3) of the Hindu Minority and Guardianship Act, 1956 is complied with.

4. Necessary declarations have been given. Therefore, the petition is made absolute in terms

of prayer clauses (b), (c) and (d). Upon receipt of consideration from the sitting tenant it would be open for the petitioner to complete the transaction with one Smt.Kamakshi Devi for purchase of an immovable property in Karnataka State and pay the consideration determined thereunder. Save and except this transaction the amount should not be utilised by the petitioner for any other purpose and in case this transaction does not go through, the sale proceeds from the sale of the flat in Mumbai, should be deposited with the Accounts Officer of this Court for being dealt with as per directions and orders of this Court. Liberty is of course reserved to the petitioner to apply.

5. Copy of agreement for sale dated 31st March 2006 with regard to an immovable property in State of Karnataka is placed on record. It is taken on record. Petition is made absolute in the above terms.

(S.C.DHARMADHIKARI, J.)